

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 679

FRIBOURG NAVIGATION COMPANY, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT**

MEMORANDUM FOR THE RESPONDENT

The question presented by this case is whether the resale price received upon the sale of an asset may be treated by the Commissioner as its salvage value in computing allowable depreciation for the year in which it was sold—with the result that the Commissioner, under the provision of the Treasury Regulations which prohibits depreciation of an asset be-

low its reasonable salvage value,¹ may deny all or any part of the claimed deduction for that year which would depreciate the asset below the actual price received. The Second Circuit, both in the instant case and in *United States v. Motorlease Corp.* (also pending on petition, No. 685), has given blanket approval to such action by the Commissioner. The Eighth Circuit, on the other hand, has denied this broad authority to the Commissioner in *United States v. S & A Co.* (a case in which the government proposes to request certiorari),² although the court indicated that the action might be taken in certain cases, *e.g.*, where the sale was made at or near the end of the estimated useful life. It is the Eighth Circuit's view that the income tax depreciation is intended to be an allowance for the wear and tear sustained by an asset through use and that, since the favorable resale price received may be the result of fluctuations in market values—which the court regarded as a factor extraneous to the depreciation system—the resale price was to be ignored, at least in the case of an unplanned sale in the middle of the originally estimated useful life.

We agree with petitioner that the issue involved here is important and heavily litigated; that there is

¹ See Treasury Regulations on Income Tax (1954 Code), Section 1.167(a)-1(a) and (c), as amended by T.D. 6507, 1960-2 Cum. Bull. 91.

² The opinion in that case is set out in the appendix to the instant petitioner's Supplemental Memorandum in Support of Petition For a Writ of Certiorari.

a conflict between the holdings of the Second and Eighth Circuits;³ and that the matter is one which calls for resolution by this Court. Accordingly, we acquiesce in a grant of the writ.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

JANUARY, 1965.

³ We do not agree, however, that there is any conflict between the holding of the Second Circuit and that of this Court in *Massey Motors v. United States*, 364 U.S. 92.